

Amendments to House Bill No. 534
1st Reading Copy

Requested by Representative Mike Menahan

For the House Judiciary Committee

Prepared by David Niss
February 20, 2009 (8:00am)

1. Title, line 6.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 13.

Strike: "law enforcement"

Insert: "peace"

3. Page 1, line 18.

Strike: "and"

4. Page 1, line 19.

Following: "process"

Insert: "; and"

(6) have been encouraged by the Montana supreme court in a written opinion of that court"

5. Page 1, line 21.

Strike: "7"

Insert: "6"

6. Page 1, lines 23 through 26.

Following: "means" on line 23

Strike: remainder of line 23 through "finished" on line 26

Insert: "an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense"

7. Page 1, line 30.

Strike: "or other place where persons are questioned"

Insert: "office, or other structure in this state where persons are held"

8. Page 2, line 4 through line 6.

Following: "required."

Strike: remainder of line 4 through "recorded." on line 6

Insert: "Except as provided in [section 4], all custodial

interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview."

9. Page 2, line 8 through page 3, line 1.

Strike: sections 4 and 5 in their entirety

Renumber: subsequent sections

10. Page 3, line 3.

Following: "Exceptions"

Insert: "to recording requirement"

11. Page 3, lines 3 through 9.

Following: "the third "."

Strike: the remainder of line 3 through "jurisdiction." on line 9

Insert: "A statement made during a custodial interrogation that was not recorded as required in [section 3] is admissible if the court finds that:

(1) the statement was made during routine processing or booking of the person or during routine border inquiries;

(2) the statement was made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;

(3) the statement was a spontaneous statement that was not made in response to a question;

(4) the statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state;

(5) after having consulted with the person's lawyer or after the person has waived the person's right to have an attorney present during the custodial interrogation, the person agreed to participate in the custodial interrogation without an electronic recording being made and, if feasible, the person's agreement was electronically recorded before the custodial interrogation began; or

(6) the peace officer in good faith failed to make an electronic recording of the custodial interrogation because the officer inadvertently failed to operate the recording equipment properly or, without the officer's knowledge, the recording equipment malfunctioned or stopped operating."

12. Page 3.

Following: line 9

Insert: "Insert: NEW SECTION. Section 5. Cautionary jury instruction. If the prosecution offers into evidence a statement made during a custodial interrogation that was not recorded in violation of [section 3] and the court finds

that the prosecution has failed to establish by a preponderance of the evidence that one of the exceptions in [section 4] applies, the judge shall, upon request of the defendant, provide the jury with a cautionary instruction noting the requirements of [section 3] and the reliability of the statement sought to be introduced compared to a statement that is electronically recorded in compliance with [section 3]."

Renumber: subsequent sections

13. Page 3, line 23.

Strike: "7"

Insert: "6"

14. Page 3, line 24.

Strike: "7"

Insert: "6"

15. Page 3, line 26.

Strike: section 9 in its entirety

- END -

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